

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Minnesota Democratic Farmer Labor
Party,

Complainant,

vs.

Minnesota Senate Republican Caucus,
Senator David Senjem, Senator Al
DeKruif, Senator Chris Gerlach, Senator
Joe Gimse, Senator Gretchen Hoffman,
Senator Benjamin Kruse, Senator Ted
Lillie, Senator Geoff Michel, Senator
Carla Nelson, Senator Claire Robling,
Senator Ray Vandeveer, Senator Pam
Wolf, Senator Michelle Fischbach,
Senator John Pederson, and Steve
Sviggum,

Respondents.

**NOTICE OF AND ORDER FOR
PREHEARING CONFERENCE
AND ASSIGNMENT OF
ADMINISTRATIVE LAW JUDGE**

TO: The Parties.

The Minnesota Democratic-Farmer-Labor Party filed this Campaign Complaint with the Office of Administrative Hearings on February 14, 2012, alleging that Respondents violated Minnesota Statutes §§ 211B.04 and 211B.09 of the Fair Campaign Practices Act in connection with a "Senate GOP Legislative Update" prepared for distribution at the Republican Precinct Caucuses on February 7, 2012.

By Order dated February 17, 2012, Administrative Law Judge Beverly Jones Heydinger determined that the Complaint set forth a *prima facie* violation of Minn. Stat. § 211B.04, but failed to set forth a *prima facie* violation of Minn. Stat. § 211B.09. The § 211B.09 claim was dismissed without prejudice.

By Order dated April 2, 2012, the Chief Administrative Law Judge assigned this matter to a Panel of Administrative Law Judges to consider the Respondents' motion for summary disposition. By Order dated June 7, 2012, Administrative Law Judge Barbara L. Neilson was assigned to replace Judge Beverly Jones Heydinger.

By Order dated June 11, 2012, the Respondents' motion for summary disposition was denied except as to Senator Doug Magnus.

On June 19, 2012, counsel for the Respondents filed affidavits on behalf of Senators Magnus, Michel and Nelson.

Based upon all of the files, records, and proceedings herein,

ORDER

IT IS ORDERED:

1. That this matter is scheduled for a prehearing conference to be held before the Panel at the Office of Administrative Hearings, commencing at **11:30 a.m. on Monday, July 16, 2012.**
2. That Administrative Law Judge Manuel J. Cervantes is assigned to replace Judge Kathleen D. Sheehy on the Panel.
3. That, by **July 11, 2012**, counsel for the MN DFL should notify the Panel if it has any opposition to the affidavits filed on behalf of Senators Joe Gimse, Geoff Michel and Carla Nelson.
4. That, by **July 11, 2012**, counsel for both parties shall advise the Panel as to whether they believe there are facts remaining in dispute in this matter that require an evidentiary hearing, or whether they believe this matter may be resolved on further written submissions.

At the prehearing conference, preliminary matters will be addressed such as identifying the issues to be resolved at hearing, the number of potential witnesses and exhibits, the date for the evidentiary hearing, the date for filing exhibits and witness lists, and determining whether the matter may be disposed of without an evidentiary hearing.

ADDITIONAL INFORMATION

The evidentiary hearing has been ordered pursuant to the authority granted to the Chief Administrative Law Judge by Minn. Stat. § 211B.35, subd. 1. The hearing will be conducted pursuant to Minn. Stat. §§ 211B.35 and 211B.36. Information about the evidentiary hearing and copies of governing state statutes and rules may be obtained online at www.oah.state.mn.us and at www.revisor.leg.state.mn.us. The Office of Administrative Hearings conducts proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota Supreme Court.

HEARING PROCEDURES

The parties will have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judges. The panel may consider any evidence and argument submitted until the hearing record is closed, or may continue a hearing to enable the parties to submit additional testimony. All hearings must be open to the public.

BURDEN OF PROOF

The burden of proving the allegations in the complaint is on the complainant. The standard of proof of a violation of section 211B.04 is a preponderance of the evidence.

DISPOSITION OF COMPLAINT

At the conclusion of the evidentiary hearing, the panel must determine whether the violation alleged in the complaint occurred and must make at least one of the following dispositions:

- (1) The panel may dismiss the complaint.
- (2) The panel may issue a reprimand.
- (3) The panel may find that a statement made in a paid advertisement or campaign material violated section 211B.06.
- (4) The panel may impose a civil penalty of up to \$5,000 for any violation of chapter 211A or 211B.
- (5) The panel may refer the complaint to the appropriate county attorney.

The panel must dispose of the complaint within three days after the hearing record closes, if an expedited probable cause hearing was required by section 211B.33; or within 14 days after the hearing record closes, if an expedited probable cause hearing was not required by section 211B.33.

JUDICIAL REVIEW

A party aggrieved by a final decision on a complaint filed under section 211B.32 is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63 to 14.69.

REASONABLE ACCOMODATION

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. To arrange an accommodation, contact the Office of Administrative Hearings at 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620, or call 651-361-7900 (voice) or 651-361-7878 (TTY).

Dated this 3rd day of July 2012.

s/Raymond R. Krause
RAYMOND R. KRAUSE
Chief Administrative Law Judge

cc: Judge Barbara L. Neilson
Judge Manuel J. Cervantes
Judge Timothy J. O'Malley
Diane Nordstrom, Docket Clerk